IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 294 OF 2005

M/s. Raghurai Tamba,
a firm registered under the
Indian Partnership Act, 1932
and carrying on business from
"Parimal", Altinho, Panaji, Goa. ..... Petitioners

V e r s u s

1. Reserve Bank of India,
   Mumbai Regional Office,
   Urban Banks Department,
   2nd Floor, Garment House,
   Worli, Mumbai – 400 018.

2. The Goa Urban Co-operative Bank Limited,
   Dr. Atmaram Borkar Road,
   Panaji, Goa – 403001.

3. The Registrar of Co-operative Societies,
   Government of Goa,
   Panaji, Goa.

4. The State of Goa,
   (through the Chief Secretary
   to the Government of Goa,
   Panaji, Goa) ..... Respondents

Mr. S. K. Kakodkar, Senior Advocate with Mr. S. D. Padiyar, Advocate for the Petitioner.

Mr. P. P. Singh, Advocate for the Respondent no.1.

Mr. R. G. Ramani, Advocate for the Respondent no.2.

Mr. S. S. Kantak, Advocate General with Ms. L. Dharwadkar, Additional Government Advocate for the Respondent Nos. 3 and 4.

CORAM: A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE: 3rd April, 2006.

ORDER (*Per N. A. BRITTO, J)*

The petitioner is a firm, of which Shri Raghurai Tamba, is a partner. In this petition filed under Article 226 of the Constitution of India, the petitioner prays for writ in the nature of certiorari or any other appropriate writ, quashing and setting aside and/or commanding the respondent no.2/Bank to extend the benefit of the OTS Scheme to the loans taken by the petitioner and also praying for injunction against respondent no.2/Bank from taking further steps under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Some facts are required to be stated to dispose of this petition.

3. The petitioner had availed of two loans from the

respondent/Bank on 30.05.1985 and 29.01.1990, in the sum of Rs.8,00,000/- and Rs.1,60,000/- respectively. As the repayment was irregular, awards came to be passed against the petitioner. In respect of the first loan, an award was made on 24.10.1996, in the sum of Rs.17,68,439.70 with interest at 19% from 01.10.1996 and in respect of second loan in the sum of Rs.5,82,604.80, with interest at the rate of 19% from 01.04.1996.

4. The Reserve Bank of India issued guidelines for framing a Scheme for One Time Settlement and pursuant to the said guidelines, the respondent/Bank approved the said Scheme on or about 31.10.2001 and the same was approved by the Registrar of Co-operative Societies on or about 29.04.2002. The said Scheme applied to all non-performing accounts, which were classified as doubtful or loss assets as on 31.03.1998. The said Scheme came to an end on 31.03.2003. The Scheme contemplated certain exceptions and one of the exceptions which is relevant to this petition was that the Scheme would not apply to the following category of loans:-

"(c) Loans availed of or guaranteed by Directors

> or by close relatives of Directors or by firms/companies/institutions in which the Directors are interested or by ex-Directors of respective urban co-operative banks."

5. On or about 13.07.2001, the petitioner wrote a letter to the respondent/Bank enclosing therewith a representation made to the Board of Directors of the Bank, with a request to submit the said representation to the Reserve Bank of India. The petitioner also enclosed two cheques dated 13.07.2001, in the sum of Rs.15,30,357.70 and Rs.91,091.80, calculated at 12% simple interest on the principal amount due as on June 1992. The petitioner also undertook to abide by the decision of the Reserve Bank of India. The respondent/Bank on or about 10.08.2001, forwarded the petitioner's representation to the Reserve Bank of India, stating that the petitioner was still liable to pay to the respondent/Bank a sum of Rs.16,93,439.70 plus interest of Rs.7,758/- plus interest and charges from 01.07.2001 and Rs.5,52,248.10 plus interest and charges from 01.07.2001, as per the awards. By another letter dated 12.06.2002, the respondent/Bank sent to Shri Raghurai Tamba, a copy of the said Scheme and stated that he was not eligible for One Time Settlement Scheme as he was Director of the Bank. On or about 08.07.2002, the respondent/Bank

wrote to the Reserve Bank of India stating that as per One Time Settlement Scheme, the petitioner had to pay Rs.6,53,198 and Rs.2,11,736/- respectively, but in the light of the said Scheme, as formulated by the Reserve Bank of India and as registered by the Co-operative Societies, Government of Goa, it was felt that Mr. Raghurai Tamba, being the ex-Director of the Bank, was not eligible for One Time Settlement as Mr. Tamba was the Director from 1974-1984, but they had no objection in considering the request of Mr. Tamba for the settling the dues under One Time Settlement Scheme.

6. On or about 13.11.2002, the Reserve Bank of India informed the respondent/Bank stating that Mr. Raghurai Tamba having been the ex-Director of the Bank, was not eligible to be considered under the One Time Settlement Scheme and this letter dated 13.11.2002, was communicated to Shri Raghurai Tamba, by the respondent/Bank by letter dated 22.11.2002.

7. The petitioner on or about 10.12.2002, wrote to the respondent/Bank and submitted a representation addressed to the Reserve Bank of India stating therein that at the time when the loan was obtained, he had ceased to be the Director of the Bank and, therefore, he was entitled

to the One Time Settlement Scheme. In the said representation, addressed to the Reserve Bank of India, the petitioner stated that explanation (c) be reviewed so that members who happened to be Directors in the past but did not avail the loans during that tenure as Directors, be entitled to One Time Settlement.

8. The Reserve Bank of India, by another communication dated 21.12.2002, informed the respondent/Bank that they had examined the representation of Shri Raghurai Tamba and that they were unable to accede to the request of Shri Tamba as Shri Tamba's case was not covered by their guidelines and this communication was conveyed to Shri Raghurai Tamba by the respondent/Bank by letter dated 02.01.2003.

9. There is no dispute that the two loans were availed off by the petitioner on 30.05.1985 and 29.01.1990. There is also no dispute that Shri Raghurai Tamba was the Chairman of the respondent/Bank from 01.12.1974 to 25.05.1978 and a Director of the Bank from 1982 to 1984. Shri Raghurai Tamba was a member of the Bank from 1985 onwards and the loans were obtained by the petitioner at a time when Shri Raghurai Tamba was an ordinary member.

10. Although the respondent/Bank in their letter dated 08.07.2002 conveyed to the Reserve Bank of India that Shri Raghurai Tamba having been an ex-Director of the Bank, the petitioner was not eligible for One Time Settlement under the said Scheme, at the same time, the respondent/Bank informed the Reserve Bank of India that they have no objection for considering the request of the petitioner/Mr. Raghurai Tamba, to settle the dues under One Time Settlement. Although an affidavit in reply has been filed on behalf of the respondent/Bank, it is stated on their behalf that they would not say anything inconsistent with the stand taken by Reserve Bank of India but they would abide by the decision of this Court. However, the respondent Reserve Bank of India, has stated that the Reserve Bank of India had taken up a policy decision not to allow OTS to Directors in public interest and in the interest of depositors. It is also stated that Para 1(c) of OTS Scheme is valid so far as it relates to the loans of ex-Directors and the said Scheme is valid and constitutional.

11. Admittedly, the petitioner as well as the respondent/Bank upon reading of the Scheme, particularly clause (c) thereof, understood that the same would not be applicable to the petitioner because Shri Raghurai

Tamba was an ex-Director of the respondent/Bank who could better understand the Scheme than the framers of the same, namely Reserve Bank of India. Likewise, the petitioner also understood the same in the like manner and, for that reason, represented to the Reserve Bank of India on or about 10.12.2002 that Clause (c) of the Scheme be reviewed so that the members who had been the Directors in the past and who did not avail of the loans during their tenure as Directors, may be made eligible for One Time Settlement Scheme. As already stated, the respondent/Bank though initially had taken the stand that the Scheme did not apply to the Petitioner, now they have stated that they would not take an inconsistent stand from the stand taken by Reserve Bank of India.

12. Shri Kakodkar, the learned Senior Counsel on behalf of the petitioner has submitted that the legal position cannot be eroded by the parties acting in a particular manner when Clause (c) Scheme legally does not apply to the case of the petitioner. Shri Kakodkar also submits that once the Scheme was adopted by the respondent/Bank, there was no question of the respondent/Bank taking any permission from the Reserve Bank of India. Clause (c), for sake of convenience and easier reading, could be split up as follows :-

> The Scheme shall not apply to the following categories of loans:
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> (i) Loans availed of or guaranteed by Directors; or
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> (ii) Loans availed of by close relatives of Directors; or
>
> (iii) Loans availed by firms/companies/institutions in which the Directors are interested; or
>
> (iv) Loans availed by ex-Directors of respective Urban Co-operative Banks.

13. Shri Kakodkar, the learned Counsel submits that the loan was taken by the petitioner which is a registered firm and not by Shri Raghurai Tamba, who was a ex-Director of the respondent/Bank. Shri Kakodkar further submits that the case of the petitioner would be covered by (iii) above as the loans were availed off by the firm and when the loans were taken, Shri Raghurai Tamba was not the Director. In other words, Shri Kakodkar contends that loans taken by firms only are covered by (iii) and the Directors of the respondent/Bank should have interest in the firms at the time the loan is taken, which is not the case at hand. Shri Kakodkar contends that Shri Raghurai Tamba was not a Director of the respondent/Bank when the loans were availed of by the petitioner, a firm,

whose partner he was.

On the other hand, Shri P. P. Singh, the learned Counsel on behalf of Reserve Bank of India, has submitted that the case of the petitioner is covered by (iv), as the petitioner being a firm, has no independent entity and since the loan was availed by the partners of the firm and Shri Raghurai Tamba, having been an ex-Director of the respondent/Bank, the petitioner was not entitled for the benefit of the said OTS Scheme. Shri P. P. Singh has also submitted that the refusal to grant the benefit of the said Scheme cannot be enforced in writ jurisdiction and has placed reliance on ***Sardar Prem Singh v. Bank of Baroda (III (2004) BC 455)***, and unreported Judgments in the case of ***Veraval Mercantile Co-op Bank Ltd. v. Reserve Bank of India*** (Special Civil Application No. 14061/2005, decided by Gujarat High Court on 29.12.2005, and ***Navalkishor Bagmal Agarwal v. Pune Peoples' Co-op Bank & ors.*** (Judgment dated 09.08.2005 in Writ Petition No. 10896/2004).

14. Admittedly, when the petition was filed on 12.07.2005, the respondent/Bank's OTS Scheme, as formulated in terms of the guidelines issued by the Reserve Bank of India, had come to an end on 31.03.2003. As

already noticed, the petitioner and respondent/Bank had rightly understood that the Scheme would not be applicable in the case of the petitioner, and for this reason, the petitioner had made a representation dated 10.12.2002, to the Reserve Bank of India for the review of the Scheme. The respondent/Bank has now stated that they would go by the decision of this Court and at the same time, they would not like to say anything which is inconsistent with what has been stated by the Reserve Bank of India. The Reserve Bank of India in turn has stated that it has taken a policy decision not to allow OTS to Directors in public interest and in the interest of depositors and in case it is extended to Directors, they will not pay deliberately which may result into failure of Banks, and there has been no challenge in the petition to such a decision. We are unable to accept the contention that the case of firms is covered only by (iii) as quoted herein above and would apply only in case of loans availed by firms in which the Directors of the Bank had subsisting interest. For all practical purposes, when the petitioner obtained the loan, though in the name of the firm, it was indeed taken by the partners of the said firm including Shri Raghurai Tamba and Shri Raghurai Tamba had been subsequently a Chairman as well as the Director of the respondent/Bank and, if in such a situation the Reserve Bank of India has taken a decision in public interest of depositors

that the benefit of the said Scheme should not be extended to the Directors, in our view, there is no way in which the petitioner can obtain enforcement of the said policy decision in writ jurisdiction. Shri Raghurai Tamba had been the Chairman as well as the Director of the Respondent/Bank and in such a situation would be in a position to influence the decisions of the Board of Directors and for that reason, the Reserve Bank of India has ensured that the benefit of the Scheme be not extended to persons who have been Directors. As stated by the Division Bench of Allahabad High Court in the case of ***Sardar Prem Singh*** (supra), it is well settled that there is no right to a party to get One Time Settlement and this Court under Article 226 of the Constitution, cannot direct for One Time Settlement and the Court can only interfere when there is violation of law but no such violation of law was pointed out. The Division Bench of this Court in the case of ***N. B. Agarwal*** (supra), has stated that the guidelines cannot be enforced if the concerned Bank finds that there are departures on the part of the party proposing a settlement and the guidelines being in the nature of draft guidelines, no writ could be issued against the respondent/Bank to enforce them and to accept the proposal given by the petitioner. It may also be stated that policy decisions taken in purported exercise of statutory power in public interest, acting reasonably and in good faith are not open to

Court's interference. [See ***Union of India v. International Trading Co. (2003(5) S.C.C. 437)***].

15. In the light of the above, we find no merit in this petition and consequently the same is hereby dismissed, with no order as to costs.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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